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Security Council

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Letter dated 23 October 2002 from the Permanent Representative of El Salvador to the United Nations addressed to the President of the Security Council

I have the honour to transmit to you, in your capacity as President of the Security Council for October, a letter dated 16 October 2002 from the Minister for Foreign Affairs of El Salvador, María Brizuela de Avila, addressed to you pursuant to the 1992 Judgment of the International Court of Justice on the frontier dispute between El Salvador and Honduras (see annex).

On behalf of my Government, I wish to request the issuance of the letter and the appendices thereto as documents of the Security Council.

(*Signed*) Víctor Manuel Lagos **Pizzati**
Ambassador
Permanent Representative

02-67402 (E) 131102 141102

Annex to the letter dated 23 October 2002 from the Permanent Representative of El Salvador to the United Nations addressed to the President of the Security Council

I have the honour to refer to the letter dated 17 September 2002 from the Minister for Foreign Affairs of the Republic of Honduras addressed to the President of the Security Council (S/2002/1088) requesting circulation of the note annexed thereto for information purposes as a document of the Security Council.

The letter states that the authorities of Honduras and El Salvador have agreed to start the process of delimitation of the common frontier as defined in the Judgment of the International Court of Justice of September 1992.

In this regard, I have the honour to confirm the information provided by the Minister for Foreign Affairs of Honduras to the effect that the two Presidents successfully concluded an agreement on delimitation of the common land frontier as defined in the Judgment of the International Court of Justice of 11 September 1992, with the exception of the sixth sector, since, as you will be aware, El Salvador has filed an application for revision of the Judgment, based on the existence of new facts, with the International Court of Justice.

The note attached by the Minister for Foreign Affairs of Honduras does not constitute the only communication on the matter which has been under discussion by the Foreign Ministries of the two States, as there are other notes on the matter from both El Salvador and Honduras.

In this regard and for the same information purposes invoked by Honduras, I have the honour to transmit herewith the complete set of notes exchanged between our two countries (see appendices 1-7), including the note dated 15 October 2002 addressed by my Government to the Government of Honduras (see appendix 7), so that the Council of which you are President and its countries are fully informed about the case, in view of which I request their circulation as documents of the Security Council.

(*Signed*) Maria **Brizuela de Avila**
Minister for Foreign Affairs

Appendix 1

Republic of Honduras

Tegucigalpa, 7 August 2000

Madam,

I have the honour to extend to you a cordial invitation for our two States, as sole riparians of the Bahía de La Unión in which the three-nautical-mile belts of the two States overlap, to commence the delimitation thereof, in the fullest spirit of fraternity, by means of special representatives.

Accept, Madam, the assurances of my highest consideration.

(*Signed*) Roberto **Flores Bermúdez**
Minister for Foreign Affairs

Her Excellency Mrs. María Eugenia Brizuela de Avila
Minister for Foreign Affairs
Republic of El Salvador

Appendix 2

Ministry of Foreign Affairs

DM No. 51/01

San Salvador, 25 April 2001

Sir,

I have the honour to refer to your note of 7 August 2000, in which you extend a cordial invitation for our two States, as sole riparians of the Bahía de La Unión in which the three-nautical-mile belts of the two States overlap, to commence the delimitation thereof, in the fullest spirit of fraternity, by means of special representatives.

I wish to inform you that our Government, on the date of receipt of the offer, took formal cognizance of the invitation extended by your Government and that, in the same spirit of fraternity, your offer for the bilateral delimitation of the Bahía de La Unión is under due consideration and study, with a view to giving you a prompt response.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) María Eugenia **Brizuela de Avila**
Minister for Foreign Affairs

His Excellency Mr. Roberto Flores Bermúdez
Minister for Foreign Affairs
Republic of Honduras

Appendix 3

Ministry of Foreign Affairs

DM/No.

San Salvador, 9 November 2001

Sir,

I have the honour to refer to your note dated 7 August 2000 and my acknowledgement of receipt dated 25 April 2001.

In your note of 7 August, you extend to our Government a cordial invitation for our two States, as sole riparians of the Bahía de La Unión in which the three-nautical-mile belts of the two States overlap, to commence the delimitation thereof, in the fullest spirit of fraternity, by means of special representatives.

In my reply dated 25 April 2001 I stated that our Government, on the date of receipt of the offer, had taken formal cognizance of the invitation extended by your Government and that, in the same spirit of fraternity, your offer for the bilateral delimitation of the Bahía de La Unión was under due consideration and study, with a view to giving you a prompt response.

In this regard and after study of the matter, I have the honour to state that my Government enthusiastically welcomes the initiation of a frank and sincere dialogue between our two Governments, on the basis of negotiations in good faith, with a view to further strengthening and deepening the regional integration process by concluding the necessary agreements.

Accordingly, my Government agrees to the appointment of special representatives from both States in order to begin the negotiations for the delimitation or demarcation of these waters in which, because of their proximity, the belts overlap over which the two States have jurisdiction in their exclusive maritime coastal areas adjacent to the mainland and islands, including the maritime spaces of the Salvadoran islands of Meanguera and Meanguerita and the maritime spaces of the Honduran island of El Tigre, on the basis of an arrangement or agreement in keeping with the principles recognized by international law.

Further, my Government understands your offer to mean that the said representatives will take account, in the dialogue to be held on the maritime spaces contiguous to the mainland and islands, of the special situation of the maritime spaces contiguous to the Salvadoran island of Conejo, so that by means of a frank and sincere dialogue we may reach agreements that are fair to both States.

His Excellency Mr. Roberto Flores Bermúdez
Minister for Foreign Affairs
Republic of Honduras

My Government wishes to state expressly that the commencement of this frank and sincere dialogue proposed by your Government and accepted by mine in a spirit of cooperation and good faith does not mean that the State of El Salvador waives its right to use the remedy of revision within a period of 10 years in the event of the existence of a new fact, with regard to both the maritime area in question and the Salvadoran islands to which the three miles of maritime space are contiguous, the delta of the river Goascorán and the remaining sectors that were the subject of a dispute, unless the talks between our respective representatives result in an agreement.

My Government wishes to express its satisfaction at the offer extended to it and again reiterates that our special representatives will come to the talks duly informed and prepared to negotiate in good faith an agreement that is fully satisfactory to both parties.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) María Eugenia **Brizuela de Avila**
Minister for Foreign Affairs

Appendix 4

Ministry of Foreign Affairs
Republic of Honduras

Note No. 024-DSM

Tegucigalpa, 18 January 2002

Madam,

I have the honour to refer to your note dated 9 November 2001 concerning my suggestion made on 7 August 2000 that our two Governments should begin a dialogue on the delimitation of the waters of the Bahía de La Unión.

My Government's invitation to establish a joint commission to enable a frank and sincere dialogue, based on good faith and fraternity, to be conducted on delimiting the Bahía de La Unión did not impose any conditions as to the issues that commission members might decide to discuss.

Accordingly, I regret that I cannot accept the conditions set forth in your note of 9 November 2001, since I believe that it will be for the members of the commission to decide what issues to discuss. Such discussion will have to be guided by the principles and norms of international law and by the provisions of the 11 September 1992 Judgment of the International Court of Justice, which is binding on both States.

Accept, Madam, the renewed assurances of my highest consideration.

(*Signed*) Roberto **Flores Bermúdez**
Minister for Foreign Affairs

Her Excellency Mrs. María Eugenia Brizuela de Avila
Minister for Foreign Affairs
El Salvador

Appendix 5

Ministry of Foreign Affairs

No. 27/02

San Salvador, 3 April 2002

Sir,

I have the honour to refer to the note dated 18 January 2002 sent to my office by the then Minister for Foreign Affairs, Mr. Roberto Flores Bermúdez, in which he responded to my note dated 9 November 2001 referring to the cordial invitation extended in his Ministry's note of 7 August 2000 for our two States, as sole riparians of the Bahía de La Unión in which the three-nautical-mile belts of the two States overlap, to commence the delimitation thereof, in the fullest spirit of fraternity, by means of special representatives.

In this connection, my Government, as I indicated in my note of 9 November 2001, has enthusiastically welcomed your offer of bilateral delimitation talks and has proposed the initiation of a frank and sincere dialogue between our two States, on the basis of negotiations in good faith, with a view to further strengthening and deepening the regional integration process.

Accordingly, my Government has expressed its agreement to the appointment of special representatives from both States in order to begin the negotiations for the delimitation of those waters of the two States which overlap in the belts over which El Salvador and Honduras have jurisdiction in their exclusive maritime coastal areas adjacent to the mainland and islands.

In this connection, my Government believes that the joint commission to be entrusted with this process will have to be guided in its negotiations by the 9 March 1917 Judgment of the Central American Court of Justice, the 11 September 1992 Judgment of the International Court of Justice, State practice and the principles and norms of international law.

My Government wishes to reiterate that the spirit now guiding our Governments is a guarantee of success and to assure you that our special representatives will be prepared to negotiate in good faith an agreement that satisfies the interests of both parties.

Accept, Sir, the renewed assurances of my highest consideration.

(*Signed*) María Eugenia **Brizuela de Avila**

His Excellency Mr. Guillermo Augusto Pérez Arias
Minister for Foreign Affairs
Republic of Honduras

Appendix 6

Ministry of Foreign Affairs
Republic of Honduras

Note No. 087-DSM

Tegucigalpa, 9 September 2002

Madam,

I have the honour to acknowledge receipt of your note No. 27/02 of 3 April 2002 in which you refer to the cordial invitation extended by Honduras in the note of 7 August 2000 for our two States, as sole riparians of the Bahía de La Unión in which the three-nautical-mile belts of the two States overlap, to commence the delimitation thereof, in the fullest spirit of fraternity, by means of special representatives.

In your note you also state that your Government has expressed its agreement to the appointment of special representatives from both States in order to begin the negotiations for the delimitation of those waters of the two States which overlap in the belts over which El Salvador and Honduras have jurisdiction in their exclusive maritime coastal areas adjacent to the mainland and islands.

My Government also wishes to assure you of its fraternal feelings towards your country and your Government in respect of any discussions that might result in new agreements concerning the waters both inside and outside the Bay of Fonseca, on the understanding that the Judgment of the International Court of Justice of 11 September 1992 incorporates and subsumes the 1917 Judgment of the Central American Court of Justice, the principles and norms of international law and the practice of riparian States of the Gulf.

If this basis is acceptable to you, I shall be pleased to communicate to you the names of the persons who will serve as special representatives of Honduras in the bilateral talks.

Accept, Madam, the renewed assurance of my highest consideration.

(*Signed*) Guillermo **Pérez-Cadalso Arias**
Minister for Foreign Affairs

Her Excellency Mrs. María Eugenia Brizuela de Avila
Minister for Foreign Affairs
Republic of El Salvador

Appendix 7

Ministry of Foreign Affairs
Republic of El Salvador

San Salvador, 15 October 2002

Sir,

I have the honour to refer to note No. 087-DSM of 9 September 2002 in which you refer to the exchanges of notes between our two Governments and, in particular, to my note No. 27/02 of 3 April 2002 referring to the cordial invitation extended by Honduras in the note of 7 August 2000 for our two States, as sole riparians of the Bahía de La Unión in which the three-nautical-mile belts of the two States overlap, to commence the delimitation thereof, in the fullest spirit of fraternity, by means of special representatives.

In your note, you also refer to our statement that our Government has expressed its agreement to the appointment of special representatives from both States in order to begin the negotiations for the delimitation of those waters of the two States which overlap in the belts over which El Salvador and Honduras have jurisdiction in their exclusive maritime coastal areas adjacent to the mainland and islands.

In the same note to which you refer, namely, that of 3 April 2002, I told you with due respect that my Government believes that the joint commission to be entrusted with this process will have to be guided in its negotiations by the 9 March 1917 Judgment of the Central American Court of Justice, the 11 September 1992 Judgment of the International Court of Justice, State practice and the principles and norms of international law.

The foregoing must be interpreted in relation to what we said in our note of 9 November 2001, which read as follows: "Accordingly, my Government agrees to the appointment of special representatives from both States in order to begin the negotiations for the delimitation or demarcation of those waters in which, because of their proximity, the belts overlap over which the two States have jurisdiction in their exclusive maritime coastal areas adjacent to the mainland and islands, including the maritime spaces of the Salvadoran islands of Meanguera and Meanguerita and the maritime spaces of the Honduran island of El Tigre, on the basis of an arrangement or agreement in keeping with the principles recognized by international law. Further, my Government understands your offer to mean that the said representatives will take account, in the dialogue to be held on the maritime spaces contiguous to the mainland and islands, of the special situation of the maritime spaces contiguous to the Salvadoran island of Conejo, so that by means of a frank and sincere dialogue we may reach agreements that are fair to both States. My Government wishes to

His Excellency Mr. Guillermo Pérez-Cadalso Arias
Minister for Foreign Affairs
Republic of Honduras

state expressly that the commencement of this frank and sincere dialogue proposed by your Government and accepted by mine in a spirit of cooperation and good faith does not mean that the State of El Salvador waives its right to use the remedy of revision within a period of 10 years in the event of the existence of a new fact, with regard to both the maritime area in question and the Salvadoran islands to which the three miles of maritime space are contiguous, the delta of the river Goascorán and the remaining sectors that were the subject of a dispute, unless the talks between our respective representatives result in an agreement."

I have deemed it necessary to refer to what our country said in the above-mentioned notes because of what your note of 9 September 2002 says next, namely, that your Government also wishes to assure me of its fraternal feelings towards my country and my Government in respect of any discussions that might result in new agreements concerning the waters both inside and outside the Bay of Fonseca, on the understanding that the Judgment of the International Court of Justice of 11 September 1992 incorporates and subsumes the 1917 Judgment of the Central American Court of Justice, the principles and norms of international law and the practice of riparian States of the Gulf.

While also assuring you of our Government's fraternal and sincere feelings towards your country and your Government, I wish to reiterate that, as stated in our note of 9 November 2001, the purpose of the dialogue was to initiate talks between our two States on those waters which, in theory, could be divided bilaterally in the Gulf of Fonseca, in other words, those areas in which there is an overlap between the exclusive zones or territorial seas of the waters under the jurisdiction of the two States adjacent to their mainland and islands, the reason being that this is a matter which can be resolved bilaterally by Honduras and El Salvador, since the overlap does not give rise to joint ownership and must be the subject of an agreement in keeping with international law, as the 1917 Judgment indicated. I also wish to recall that, in the same note, we made the following proviso: "My Government wishes to state expressly that the commencement of this frank and sincere dialogue proposed by your Government and accepted by mine in a spirit of cooperation and good faith does not mean that the State of El Salvador waives its right to use the remedy of revision within a period of 10 years in the event of the existence of a new fact, with regard to both the maritime area in question and the Salvadoran islands to which the three miles of maritime space are contiguous, the delta of the river Goascorán and the remaining sectors that were the subject of a dispute, unless the talks between our respective representatives result in an agreement".

The fact is that we received your note after the submission to the International Court of Justice, on 10 September 2002, of our application for revision of the 1992 Judgment, specifically the decision on the sixth and last sector of the land frontier, namely, the delta of the river Goascorán. Since the waters which were to have been the subject of the dialogue between our two States are largely adjacent to the area now under discussion as a result of the submission of our application for revision, our Government believes that there would be no point in commencing a dialogue on the area now subject to revision until the International Court of Justice has taken the corresponding legal decision on El Salvador's application. Accordingly, and in a spirit of good faith, my Government suggests to the Government of Honduras that we should await the final outcome of the application before agreeing how to proceed.

We should like to draw attention to the part of your note of 9 September 2002 in which you refer to "any discussions that might result in new agreements concerning the waters both inside and outside the Bay of Fonseca", for we have checked our archives and, other than the Memorandum of Understanding signed by the Chiefs of Navies of El Salvador, Honduras and Nicaragua in the port of Corinto, Nicaragua, on 8 March 2002 and ratified by the Presidents of the three countries in the Pochomil Presidential Declaration of 12 March 2002, we have found no record of any agreement on the remaining waters of the Gulf, much less those outside the Bay of Fonseca. Besides, such an agreement could never be bilateral, i.e. between El Salvador and Honduras alone, since the very nature of things, the geography of the Gulf and the express terms of the 1992 Judgment require that there be agreement among all three States. In other words, the Republic of Nicaragua must be a party to any agreement.

Moreover, while my Government stated in its note of 3 April 2002 that the joint commission to be entrusted with the process will have to be guided in its negotiations by the 9 March 1917 Judgment of the Central American Court of Justice, the 11 September 1992 Judgment of the International Court of Justice, State practice and the principles and norms of international law, it did so in order to establish the different sources or elements that make up or influence the legal regime of the Gulf of Fonseca; it was not its intention to establish any hierarchy among them. Accordingly, we are very struck by the following statement in your note of 9 September 2002: "on the understanding that the Judgment of the International Court of Justice of 11 September 1992 incorporates and subsumes the 1917 Judgment of the Central American Court of Justice, the principles and norms of international law and the practice of riparian States of the Gulf".

My Government regrets that it must expressly reject the above statement, for we have at no time interpreted the scope and content of the 11 September 1992 Judgment as incorporating and subsuming the Judgment of the Central American Court of Justice. First of all, the 1917 Judgment was not the subject of the dispute and is mentioned nowhere in the 1992 Judgment and, secondly, a true interpretation, valid for all three States of the legal regime governing the Gulf, can only be made with the consent and active participation of the Republic of Nicaragua and not bilaterally.

Similar considerations apply with respect to the reference to the principles and norms of international law and the practice of riparian States of the Gulf.

Accept, Sir, the renewed assurances of my highest consideration.

(*Signed*) María Eugenia **Brizuela de Avila**
Minister for Foreign Affairs